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COMMITTEE OF THE WHOLE

SUMMARY RECORD OF THE 6th MEETING

Held at the Headquarters of the Food and Agriculture Organization of the United Nations
on Thursday, 18 June 1998, at 3 p.m.

Chairman: Mr. P. KIRSCH (Canada)
later: Ms. FERNANDEZ de GURMENDI (Argentina) (Vice-Chairman)

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The meeting was called to order at 3.25 p.m.

DESIGNATION OF COORDINATORS

1. **The CHAIRMAN** announced the list of Coordinators for the various sections of the Statute: preamble: Mr. Slade (Samoa); Part 1: Mr. Rama Rao (India); Part 2: war crimes: Mr. van Hebel (Netherlands); crimes against humanity: Mr. Sadi (Jordan); aggression and other crimes: Mr. Manongi (United Republic of Tanzania); jurisdiction: Mr. Kourula (Finland); admissibility: Mr. Holmes (Canada); Part 3: Mr. Saland (Sweden); Part 4: Mr. Rwelamira (South Africa); Parts 5 and 6: Ms. Fernández de Gurmendi (Argentina); Part 7: Mr. Fife (Norway); Part 8: Ms. Fernández de Gurmendi (Argentina); Part 9: Mr. Mochochoko (Lesotho); Part 10: Ms. Warlow (United Statesof America); Parts 11 and 12: Mr. Rama Rao (India); final clauses: Mr. Slade (Samoa).

2. The list was not exhaustive and could be supplemented in consultation with the Bureau.

CONSIDERATION OF THE QUESTION CONCERNING THE FINALIZATION AND ADOPTION OF A CONVENTION ON THE ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT IN ACCORDANCE WITH GENERAL ASSEMBLY RESOLUTIONS 51/207 OF 17 DECEMBER 1996 AND 52/160 OF 15 DECEMBER 1997 (*continued*) (A/CONF.183/2/Add.1; A/CONF.183/C.1/L.1 and L.4)

Part 1 of the draft Statute (continued)

3. **The CHAIRMAN** asked for a report on the informal consultations that had taken place.

4. **Ms. WILMSHURST** (United Kingdom) said that two substantive problems had been considered with regard to article 1 of the draft Statute (A/CONF.183/2/Add.1). Many delegations thought that the term "the most serious crimes of international concern" was too vague, and it was proposed that the words "as referred to in this Statute" be added after the words "for the most serious crimes of international concern".

5. It was agreed that article 1 could be sent to the Drafting Committee on the understanding that the use of the word "persons" would be reconsidered in the Committee of the Whole in the light of any agreement reached with regard to article 23. It was thought that other remarks made about article 1 could be dealt with in the Drafting Committee.

6. A number of suggestions had been made with regard to article 3, paragraph 3. It had been pointed out that the reference to powers and functions of the Court was rather wide and it was suggested that that term should be linked to other provisions of the Statute by adding the words "as provided in this Statute" after the words "powers and function". Some representatives thought the paragraph should not appear in article 3. Since others were still undecided as to its placement, it was proposed that the question should be referred to the Drafting Committee. It was asked whether the word "powers" in paragraph 3 of article 3 was necessary, and it was suggested that the Drafting Committee should be requested to consider that question, without prejudice to further consideration by the Committee of the Whole.

7. Assuming agreement on those amendments to article 1 and paragraph 3 of article 3 and on the suggested recommendations to the Drafting Committee, she proposed that the whole of Part 1 be sent to the Drafting Committee.

8. **Mr. GÜNEY** (Turkey) asked to see the proposed amendments in writing before taking a decision.

9. **Mr. SADI** (Jordan) said that the words "by special agreement" in article 3, paragraph 3, gave him some concern. The underlying intention should be spelt out clearly.

10. **Mr. CHUKRI** (Syrian Arab Republic) drew the Committee's attention to a discrepancy in the wording of article 1. The Arabic phrase used to translate the English phrase "to bring persons to justice" meant to present persons to court. He was not sure whether that was a drafting problem or a matter of substance.

11. **Mr. HAMDAN** (Lebanon) shared the concerns expressed by the representative of Jordan, and asked whether the question of article 3, paragraph 3, could be settled by the Drafting Committee. That point might have important implications for the paragraph as a whole.

12. **The CHAIRMAN** suggested that the amendments be put in writing for comments by interested delegations and for subsequent referral to the Drafting Committee.

13. *It was so agreed.*

Part 2 of the draft Statute (*continued*)

Article 5 (*continued*)

14. **The CHAIRMAN** said that the Committee would now consider the provisions on aggression and other crimes.

15. **Mr. VAN DER WIND** (Netherlands), acting as Coordinator, said that the crime of aggression had been discussed in the Preparatory Committee, initially on the basis of the definition included in the Nuremberg Charter and of the definition included in General Assembly resolution 3314 (XXIX). During those discussions, it had become clear that neither of the precedents was considered acceptable or appropriate for full inclusion.

16. The relevant section of the draft Statute contained three options. Option 1 was an attempt to combine elements of the Nuremberg precedent and the resolution 3314 precedent. However, option 3 was later considered to have taken over the role of option 1, though a number of delegations were still in favour of the option 2 approach, in which acts which might constitute aggression were also enumerated.

17. Whatever the option selected, two elements deserved further consideration by the Committee of the Whole, namely, whether determination of aggression by the Security Council should be a prerequisite for action by the Court, and whether occupation or annexation was also an essential element.

18. Regarding treaty crimes, namely, drug trafficking, terrorism and attacks on United Nations and associated personnel, the major question was whether any of them should be included. He suggested that the Committee might first focus on the question of whether there was sufficient support for their inclusion and, if that were the case, consider the question of definition.

19. **Mr. WESTDICKENBERG** (Germany) said that his country maintained its strong support for inclusion of the crime of aggression in the Statute. His general approach to that issue was set forth in an informal discussion paper available to delegations.

20. In the light of the deliberations at the most recent Preparatory Committee session, consultations and statements in the plenary, he believed that a workable and precise definition of the crime of aggression could be found. During the Preparatory Committee deliberations, two basic approaches had been taken. Some delegations had favoured a definition based on General Assembly resolution 3314 (XXIX) of 1974, which contained an exhaustive enumeration of acts constituting aggression. The debates and consultations during the work of the Preparatory Committee had also led to the formulation of a definition supported by a large number of delegations which was currently contained in option 3. As a compromise, that option mentioned the most important cases of the use of armed force that constituted crimes of aggression, in particular, armed attacks undertaken in violation of the Charter, which had the objective of, or resulted in, the military occupation or annexation of the territory of another State or part thereof.

21. That option should be preferred because it was necessary to limit the crime to undeniable cases of armed attacks committed in violation of the Charter that were of such magnitude as to warrant individual criminal responsibility.

22. The definition must not lend itself to frivolous accusations of a political nature against the leadership of a Member State. Also, the definition must not negatively affect the legitimate use of armed force in conformity with the Charter, the necessity of which could not be ruled out in the future. Furthermore, the definition contained in option 3 was in line with historic precedents such as the Charter of the Nuremberg Military Tribunal. It also met the strict standard of legal precision, clarity and certainty that was necessary for a norm providing for individual criminal responsibility. The broad and enumerative approach of General Assembly resolution 3314 (XXIX) would not command general agreement.

23. It was also necessary to address the role of the Security Council, in which context it was clear that the Statute of the International Criminal Court (ICC) could not redraft the United Nations Charter and that the primary responsibility of the Security Council for the maintenance of international peace and security had to be taken into account. By virtue of Chapter VII of the Charter, it was the Security Council's task to determine whether a given State had committed an act of aggression or not. Any attempt to circumvent the responsibilities of the Security Council would run counter to the Charter of the United Nations and would make it impossible for many States—including Germany—to continue to favour the inclusion of the crime of aggression in the Statute. The result might be that the crime of aggression would not be included in the Statute at all.

24. On the other hand, acknowledgement of the role of the Security Council would not and must not endanger the independence of the Court in determining individual criminal responsibility. Accordingly, delegations should decide whether they favoured the inclusion of a workable and realistic definition of the crime of aggression in the Statute of the ICC, taking into account the powers and responsibilities of the Security Council under the United Nations Charter.

25. **Mr. CHUKRI** (Syrian Arab Republic) said that the Statute should not cover terrorism, drug trafficking, and attacks on United Nations personnel. Terrorism was not well defined, and to include it would cause confusion. Drug trafficking and crimes concerning drugs should be dealt with by national courts. Attacks on United Nations officials should not be a matter for an international court.

26. Without having seen the text prepared by Germany and reading the alternatives presented in the draft Statute, he pointed out that there was a great difference between determining the occurrence of aggression, which was a political act and a prerogative of the Security Council under Article 39 and other articles of Chapter VII, and formulating a definition of aggression, which was a purely legal matter. There were two widely circulated definitions of aggression: that of the Nuremberg Tribunal, and that of resolution 3314 (XXIX) of 1974. His

delegation favoured the definition included in General Assembly resolution 3314 which represented the accumulated work of years.

27. A clear-cut distinction should be drawn between aggressors and freedom fighters. General Assembly resolution 3314 (XXIX), after enumerating acts of aggression, excluded freedom fighters acting in accordance with their right to national self-determination from being labelled as aggressors. No such provision was found in any of the alternatives or options presented to the Committee. His delegation would read the German proposal and would be flexible but preferred to take resolution 3314 of 1974 as a starting point for defining aggression. He reserved the right of his delegation to speak to that point later.

28. **Mr. NYASULU** (Malawi) supported option 3. While there was no doubt that the Charter empowered the Security Council to determine the occurrence of aggression, it might be argued that the International Criminal Court might proceed even in the absence of determination by the Security Council. That was the position that Malawi had always espoused. However, it had become clear that some countries would accept the inclusion of aggression as a crime only if there were a role for the Security Council.

29. Inside paragraph 1 of option 3, the brackets might have to be deleted, though that might not allay the fears of many States, particularly on the independence of the Court, considering that the Security Council's determination would be political in nature. It might therefore be useful to consider reversing the obligation: instead of subjecting the definition to determination by the Security Council, the obligation should be on the Court to seek such determination.

30. Option 3 might therefore have a third paragraph to read as follows: "The Court may seek a determination of the Security Council before proceeding on a charge concerning the crime of aggression." It might also be useful to leave no doubt about the competence of the Security Council under the Charter on matters concerning aggression. Perhaps a clause could be inserted as a fourth paragraph, to read as follows: "The definition of aggression under the present Statute is without prejudice to the powers and functions of the Security Council under the Charter of the United Nations."

31. A contravention of the Charter, as mentioned in the last part of paragraph 1, need not be qualified by the word "manifest". He would favour deleting the brackets around paragraph 1. Military occupation or annexation was not a condition for aggression to be manifest and for individuals concerned to be found responsible.

32. **Mr. STIGEN** (Norway) said that the crimes of terrorism, crimes against United Nations personnel, narcotic drugs trafficking or similar crimes not covered by the so-called core crimes were undoubtedly of international concern. However, in view of very serious and valid concerns—for instance, those of Thailand on narcotic drugs trafficking—a revision clause should be included to provide for amending the list in the future.

33. He appreciated the efforts of the German delegation to find a viable compromise on the crime of aggression, which was indeed of major concern, but he doubted whether it would be possible to find a satisfactory definition that would be consensually based, in view of the remarks of delegations that had just spoken, for whom he had high regard.

34. Apart from the issue of definition, there was the question of the Security Council, and he was not persuaded that a consensus on that issue was possible at the current stage, though he would be happy to see any basis for consensus evolving in the course of the discussion.

35. **Ms. TOMIČ** (Slovenia) said that her delegation strongly favoured the inclusion of the crime of aggression within the Court's jurisdiction and that it would be an unacceptable backward step if agreement could not be reached on that point. Aggression, being essentially a crime against peace, was usually accompanied by the commission of other serious violations of international humanitarian and human rights law. However, in many cases it would prove difficult to trace the commission of the latter crimes directly to the responsible persons in high positions, while the crime of aggression was easily attributable to those persons. Those were compelling reasons for adding a provision on the determination of individual criminal responsibility for aggression in the Statute of the Court. Such a provision should be appropriately brought in line with other provisions of the Statute regarding the role of the Security Council.

36. The definition of the crime of aggression should be precise, clear and preferably short, for which reasons she preferred option 3, which covered the relevant acts in a generic manner. However, it would also be necessary to consider the matter in relation with article 23, paragraph 7 (b).

37. **Mr. TOMKA** (Slovakia) said that treaty crimes were definitely of international concern, but nevertheless different in nature from the core crimes. His country was a party to a number of conventions concerning treaty crimes, but he nevertheless considered that they should not be included in the Statute.

38. His delegation strongly supported the inclusion of the crime of aggression in the Statute and thought it would be a serious mistake not to include it.

39. He agreed with the representative of Germany that option 3 represented the best option concerning definition. Nevertheless, he had some doubts whether the precondition for trying persons for committing the crime of aggression should be a determination by the Security Council. He understood the primary role of the Security Council in respect of Article 39 of the Charter, but thought that such determination was a precondition for taking action which was binding upon Member States; it would be difficult to imagine that such a precondition was necessary for the International Criminal Court.

40. Aggression was an objective category and it should be for the Court to determine whether an act of aggression had been committed or not. On the other hand, he accepted some linkage or relationship between the Security Council and the Court and would support the view that the Security Council had the power to determine that certain acts, although considered *prima facie* as aggression, did not in fact constitute acts of aggression. That was also in line with the role of the Security Council as envisaged in other parts of the Statute.

41. **Mr. MAHMOOD** (Pakistan) agreed that the Statute should include the most heinous crimes of international concern but opposed the inclusion of aggression because of its controversial nature. The definition of aggression which had been adopted by the General Assembly in 1974 was considered by many States, including Pakistan, as being of a non-binding nature, and more political than legal. Regarding a role for the Security Council in the matter, any such role would introduce a political element which would undermine the trigger mechanism, and would also run counter to the basic philosophy of complementarity devised to preserve the jurisdiction of national legal systems.

42. Furthermore, aggression was traditionally considered a crime committed by States, whereas Pakistan favoured the principle that the Court's jurisdiction should be limited only to crimes committed by individuals. That raised the complex problem as to how an individual might be prosecuted and punished for aggression, unless the Security Council first determined the existence of aggression, and that then those responsible were identified. In most cases those in authority would be the accused, something which threatened the concept of sovereignty of States.

43. If crimes of terrorism were to be included, selective definitions of terrorism would not be acceptable, and terrorism would have to be considered in all its forms and manifestations.

44. There were already a large number of treaties related to illicit traffic in narcotic drugs and psychotropic substances. Furthermore, States had enacted legislation to implement those treaties and had assumed jurisdiction over such offences. Consequently, the Court's jurisdiction would apply only if States parties to the ICC Statute had expressly consented to the Court's jurisdiction over such crimes.

45. **Mr. NATHAN** (Israel) was aware that the crime of aggression was of paramount concern to the international community, but was not convinced that it should be included in the jurisdiction of the International Criminal Court. The Statute of the ICC provided for penal sanctions against criminal acts or omissions and had to be based on precise and universally accepted definitions. Such a definition of the crime of aggression had not so far been forthcoming, and its absence might lead to the introduction of politically motivated definitions which might affect the independence and non-political character of the Court.

46. Option 1 followed largely the Nuremberg definition of crimes against peace, and option 2 that of General Assembly resolution 3314 (XXIX). However, no enumeration of acts of aggression would be exhaustive, and thus a large number of acts which would qualify as acts of aggression within the meaning of the resolution would not be included in the definition.

47. The third definition contained in the draft bore witness to the danger of politicization. Its object was obviously to single out as an act of aggression an armed attack aimed at establishing a military occupation, assuming acts of aggression to be irrelevant.

48. Acts of aggression were committed by States against States and did not belong to the category of offences committed by individuals in violation of international humanitarian law, which was what the Statute was intended to deal with.

49. While upholding his objection to the inclusion of the crime of aggression within the Statute of the Court, he said that, if it should be decided to include it, the exercise of jurisdiction should be subject to determination by the Security Council that an act of aggression had occurred. However, such determination by the Security Council would adversely affect the major defences available to the accused before the International Criminal Court, and might also affect the standing of the Court as an independent judicial organ.

50. The inclusion of aggression within the jurisdiction of the Court might be left for a future review conference, by which time a definition acceptable to the major part of the international community might have been developed.

51. The crime of terrorism was regarded as an international crime in keeping with the General Assembly Declaration on Measures to Eliminate International Terrorism. His delegation considered that the Conference should strike a correct balance between recognizing terrorism as an international crime, and focusing on the most practical and effective means of cooperation in bringing international terrorists to justice.

52. **Mr. CHERQUAOUI** (Morocco) agreed with the Syrian delegation that illicit traffic in narcotics, crimes against United Nations personnel and terrorism should not fall within the jurisdiction of the Court.

53. Given the difficulty of finding a precise definition of the crime of aggression and the role of the Security Council, he thought that aggression should be excluded from the list of crimes falling within the

competence of the Court. However, if there were to be a consensus for its inclusion, the Syrian proposal should be considered, and an attempt made to find a definition of aggression that was consistent with General Assembly resolution 3314 (XXIX) of 1974.

54. **Mr. ABDELLA AL HAMEDI** (Iraq) said that his delegation would prefer the crime of aggression to be within the jurisdiction of the Court, taking into account General Assembly resolution 3314 (XXIX) of 1974. Because of the lack of any other definition of the crime of aggression, the General Assembly text should be the basis of any subsequent definition. His delegation favoured option 2.

55. His delegation was opposed to including terrorism and crimes committed against United Nations personnel, as well as crimes relating to illicit traffic in narcotics, in the Court's jurisdiction.

56. **Mr. MATSUDA** (Japan) supported the inclusion of aggression in the Statute. In his view, option 3, which was a generic approach that had emerged from discussion in the Preparatory Committee, could form the basis for the final text. At the same time, the constituent elements of aggression must be defined as clearly and precisely as possible.

57. Paragraph 1 of option 3 could be improved by making it clear that soldiers of low rank could not be held guilty of aggression. The words "as a leader or organizer" could be added after "an individual who is in a position of exercising control or capable of directing the political and military action of the State".

58. If the Court were to exercise jurisdiction over the crime of aggression, determination by the Security Council of the existence of the act of aggression must be required. He therefore suggested that the square brackets in the first and second lines of paragraph 1 be removed.

59. While he agreed that treaty-based crimes were of international concern, he thought that it was not necessary to include them in the Statute. A framework of cooperation had already been established for the prosecution and punishment of those crimes.

60. **Mr. KOFFI** (Côte d'Ivoire) said that his delegation would favour inclusion of the crime of aggression in the Statute if there was a sufficient majority in support of that. On that assumption, he urged that the square brackets be deleted and the text be forwarded to the Drafting Committee. His delegation strongly urged the inclusion of crimes against United Nations and associated personnel within the competence of the Court.

61. It would be premature to include illicit traffic in narcotics in the Statute at the current stage, but the other provisions on treaty crimes could be forwarded to the Drafting Committee.

62. Including acts of aggression within the jurisdiction of the Court would not conflict with the prerogatives of the Security Council under Chapter VII of the Charter, and questions of aggression could be brought before the Court by the Council. His delegation was flexible as to the definition of aggression, which should be based either on General Assembly resolution 3314 (XXIX), or on option 3, which might provide a compromise approach.

63. **Mr. DIVE** (Belgium) asked what would be the logic in prosecuting war crimes if the first crime that opened all armed conflict—that is, the crime of aggression—were not prosecuted. Belgium had always strongly supported the inclusion of the crime of aggression in the Statute of the Court. For that reason, he supported option 3, presented earlier by the German delegation.

64. He accepted the specific role of the Security Council, but did not see the need to require that there be occupation or annexation before it could be considered that aggression had taken place, precisely because of the prior role of the Security Council.

65. There were no universally accepted bases for including terrorism, crimes against the safety of United Nations personnel, and traffic in narcotics. He would therefore be in favour of including a revision clause to cover those points, as suggested by the Norwegian delegation.

66. **Mr. DHANBRI** (Tunisia) said that his delegation supported the inclusion of the crime of terrorism, which was becoming more and more of a transnational crime. He did not object to inclusion of the crime of attacks against United Nations personnel and installations.

67. His delegation was in favour of including the crime of aggression within the jurisdiction of the Court and preferred option 2. He did not see the need to establish a link between the Security Council and the competence of the Court with respect to aggression. The Security Council was empowered under Chapter VII of the Charter to determine the occurrence of aggression, but it had a political role and no jurisdictional power.

68. **Ms. DASKALOPOULOU-LIVADA** (Greece) said that discussion in the Preparatory Committee and in the plenary of the Conference had revealed a marked increase in the number of States which would like to see the crime of aggression included within the jurisdiction of the Court. Indeed, it would be illogical to ignore aggression and concentrate only on its by-products—war crimes, crimes against humanity and genocide.

69. Greece had consistently maintained that aggression must fall within the jurisdiction of the ICC and had expressed its readiness to work for the formulation of a definition. Of the three options that appeared in the draft, her delegation would prefer either option 1 or option 3. Option 3 was applicable not only in the case of military occupation, but also in cases where the objective was to establish military occupation. She could consequently accept it as a compromise. Although there was a clear linkage between aggression and the role of the Security Council, that linkage did not affect the definition of the crime, and she did not wish to address the question at the current stage.

70. Her delegation was not in favour of retaining the crimes of terrorism, drug trafficking or other treaty crimes in the Statute, because the jurisdiction of the Court should, at least at the first stage, be restricted to the so-called core crimes. Otherwise, it might be necessary to introduce the notion of non-inherent jurisdiction, which would lead to a distinction between two types of crimes.

71. **Mr. SADI** (Jordan) supported the inclusion of aggression, if a proper legal framework could be worked out. On option 3, the distinction between initiating aggression and carrying it out, as referred to in subparagraphs (a) and (b) of paragraph 1, was not clear. The relationship between the individual mentioned in paragraph 1 and the "State" referred to in the line immediately following subparagraph (b) might also need to be indicated more clearly.

72. Option 3 spoke of aggression undertaken in contravention of the Charter, which could be read as suggesting that there might be aggression conducted in conformity with the Charter. He was sure that that was not the intention. Those points should be clarified.

73. **Ms. CHATOOR** (Trinidad and Tobago), speaking on behalf of the member States of the Caribbean Community (CARICOM), said that they could support the inclusion of aggression within the jurisdiction of the

Court, provided that there was an acceptable definition. They considered that option 3 was a working basis for arriving at a definition.

74. In the plenary, the head of the Trinidad and Tobago delegation had stressed that the illicit traffic in narcotic drugs was of particular concern to his country. On behalf of CARICOM, he had urged the Conference to give very serious consideration to the inclusion of that crime within the jurisdiction of the Court.

75. She did not object to the inclusion of the two other treaty crimes within the jurisdiction of the Court.

76. **Mr. Tae-hyun CHOI** (Republic of Korea) strongly supported the inclusion of aggression in the Statute and the adoption of a definition constituting a compromise between the generic and enumerative approaches, namely option 3, proposed by the German delegation. However, in the first paragraph of option 3, his delegation preferred the deletion of the phrase within square brackets dealing with the role of the Security Council.

77. His delegation did not oppose the inclusion of the crime of terrorism in the Statute but would prefer that the inclusion of the two other treaty crimes should be considered later.

78. **Ms. SHAHEN** (Libyan Arab Jamahiriya) said that her delegation strongly supported the inclusion of the crime of aggression in the jurisdiction of the ICC, and that the lack of a definition of aggression in a treaty context should not prevent its inclusion, because the international community was still endeavouring to codify all international crimes, including aggression.

79. She did not consider that the Security Council should refer cases. The Security Council had failed to deal with many cases of flagrant aggression—for instance, the attack on his country in 1986. General Assembly resolution 43/38 had declared that to be an act of aggression.

80. The Security Council and its decisions were influenced by the interests and positions of certain permanent Members, so that its resolutions were selective and followed a double standard. His delegation would object to the ICC's being paralysed if the Security Council could not decide whether or not there was aggression. He supported the remarks of Syria with regard to the definition of that crime, which should agree with General Assembly resolution 3314 (XXIX).

81. **Mr. DIAZ PANIAGUA** (Costa Rica) said that, in particular for the reasons adduced by Greece, the crime of aggression should be included in the Statute, but that the definition should be discussed in the context of article 10.

82. He supported the remarks of Trinidad and Tobago concerning drug trafficking, and also favoured the inclusion of terrorism and crimes against United Nations and associated personnel, although he noted the points made by the United Kingdom delegation at the previous meeting with regard to crimes against United Nations staff.

83. *Ms. Fernández de Gurmendi, Vice-Chairman, took the Chair.*

84. **Ms. FLORES** (Mexico) said that it would obviously be desirable for the ICC to have jurisdiction over aggression, but doubted whether the problems in that regard could be solved. She believed that the crime of aggression should comprise any armed attack carried out in violation of the United Nations Charter. The options in the consolidated text seemed too restrictive; if aggression were included, it would have to be the subject of a far more thorough debate.

85. An even greater problem was related to the link with the Security Council. If aggression were included, the Council would have to play some role, but she was not in favour of granting it an exclusive monopoly. The Court should have universal jurisdiction, and any aggressor should be punished. Granting an exclusive monopoly to the Security Council would open the door to the casting of a veto to give impunity to aggressors. A further problem was the impact on the Court's independence.

86. In view of those difficulties, it would be wise to exclude aggression from the Court's jurisdiction. At the current stage, the Conference should confine itself to the core crimes.

87. Ms. SUNDBERG (Sweden) said that, like the representatives of Norway and Germany, she would favour inclusion of aggression in the jurisdiction of the Court. It would be of great importance to maintain the distinct roles of the Court and the Security Council in that regard.

88. The ICC needed a clear and precise definition of what constituted a criminal act, and she favoured option 3. However, she supported the Norwegian suggestion that, if a consensus on defining aggression could not be reached within a reasonable time, its inclusion should be considered at a later stage, and a revision clause should be provided for.

89. She strongly supported the inclusion of crimes against United Nations and associated personnel, but did not support the inclusion of illicit drug trafficking or terrorism, since those crimes were prosecuted at the national level and multilateral cooperation already existed under relevant treaties. If implementation problems should occur, the two latter categories of crime could be considered for inclusion at a review conference.

90. Ms. DIOP (Senegal) agreed that terrorism, crimes against United Nations personnel and drug trafficking were important and serious, but thought that they should not be within the Court's jurisdiction.

91. She favoured including aggression and, in the light of the statement made by the German delegation, preferred option 3, though she had some reservations regarding drafting. Though the prerogatives of the Security Council could not be denied, a safety net was needed to ensure the independence of the Court and its decisions. Also, a way must be found to oblige the Security Council to discuss acts of aggression promptly, and it would also be necessary to deal with the veto question. The Court would need to be protected from political influence.

92. Mr. SKIBSTED (Denmark) said that his country had always strongly favoured the inclusion of aggression within the jurisdiction of the ICC. He agreed with the representatives of Germany and Greece that the Court's Statute would be highly incomplete without the inclusion of aggression.

93. In defining aggression, a balance must be struck between the Court's need to be unimpaired by political influence and the Security Council's responsibilities under the Charter. In his view, option 3 came closest to fulfilling those objectives and seemed to have the broadest support.

94. Even though treaty crimes were of international concern, the Conference should concentrate on the four core crimes. However, the door for additions to the list of crimes could be kept open by providing for an automatic review of the list of crimes by the Assembly of States Parties.

95. Ms. VINOGRADOVA (Ukraine) said that aggression and crimes against United Nations personnel should be included in the Court's jurisdiction. She supported the definition of aggression contained in option 3. The Court

should be allowed to determine whether there had been an act of aggression, and the role of the Security Council should not be decisive.

96. With regard to including such crimes as terrorism and traffic in narcotics, the ICC must be complementary to national systems. Assigning terrorism and traffic in narcotic drugs to the jurisdiction of the Court might overburden it with cases that could be successfully dealt with by national courts.

97. **Ms. BOREK** (United States of America) agreed with Norway and Mexico that including the crime of aggression raised the problem of definition and the problem of the role of the Security Council. She was sceptical as to whether the Conference would be able to adopt a satisfactory definition for the purpose of establishing criminal liability. General Assembly resolution 3314 (XXIX) did not attempt to define aggression as an individual crime and merely repeated a formula from the Nuremberg Charter.

98. The determination of aggression was a task conferred on the Security Council under the Charter. Only the Security Council could take the forceful measures that were necessary if aggression was to be addressed and remedied. That gave rise to political and other problems that had made it difficult to find consensus in the past; yet the Security Council had an essential role to play.

99. As had been said, inclusion of attacks on United Nations staff and installations would require the elaboration of a second regime. Including terrorism and drugs would distract and overburden the Court, without contributing to the successful control of such crimes.

100. As she had not spoken earlier on sections C and D of the provisions concerning war crimes, she wished to emphasize that it was essential to cover internal armed conflicts, which were the most frequent and the most cruel. That area of law had been developed and clearly established and must be included in the Statute.

101. **Ms. PIBALCHON** (Thailand) said that she supported what the representative of Trinidad and Tobago had said on the inclusion of the crime of illicit traffic in narcotic drugs and psychotropic substances. To empower the ICC to deal with drug crimes would give another chance to the international community to eradicate such crimes.
102. Her delegation favoured including aggression under the jurisdiction of the ICC. The Security Council should be given the power to refer cases to the ICC and should have the role of determining whether an act of aggression had occurred before the ICC adjudicated the case.

103. **Mr. PALIHAKKARA** (Sri Lanka) said that his delegation agreed with the representative of Thailand and supported the inclusion of crimes of terrorism and crimes related to illicit drug trafficking. His delegation believed that an inclusive approach would promote more broad-based support for the ICC Statute and the universality of its jurisdiction.

104. There were technical problems in the inclusion of such crimes in an inherent jurisdiction regime, but it was the task of the Conference to solve such problems. It would be incongruous for the ICC Statute to make no reference to terrorism and, for example, the use of nuclear weapons while referring to murder and the use of landmines as serious crimes of international concern. His delegation would participate constructively in any working group on that issue, in order to develop a consensus.

105. It would be unrealistic to ignore aggression, which was often the root cause of many other crimes and humanitarian abuses falling within the ICC's purview. As had been stated, the increasing support evident for the

inclusion of aggression showed the way forward. He had an open mind regarding the options and would help work towards a consensus.

106. **Mr. PANIN** (Russian Federation) said that the inclusion of aggression in the jurisdiction of the Court was of particular importance. Crimes against humanity were often committed as part of wars of aggression.

107. He thanked the German delegation for its efforts to develop a definition of aggression and supported the generic approach adopted. The role of the Security Council in the context of aggression was of decisive importance and its powers under the Charter should be fully reflected in the definition.

108. The decisions of an international body operating in accordance with an international treaty with respect to determining the existence of an act of aggression were binding and could not simply be disregarded. Two organs should not have overlapping powers in that area. For that reason also, he supported option 3 in the draft concerning the crime of aggression in document A/CONF.182/2/Add.1.

109. It would be premature to include illicit traffic in narcotic drugs or crimes against United Nations personnel in the jurisdiction of the Court. He also had doubts about the provisions on terrorism as they were now formulated, but could see some point in extending the jurisdiction of the Court to the most serious crimes of terrorism that were of concern to the entire international community, subject to a decision of the Security Council.

110. **Mr. KERMA** (Algeria) said that terrorism should be within the Court's jurisdiction. He agreed with the representative of Norway that it was a matter of great concern to the international community, as reflected in the large number of international instruments that had been prepared in order to deal with the various aspects of the phenomenon and in the efforts of States to explore other ways and means of strengthening their cooperation in order to end those acts.

111. With regard to illicit drug trafficking, the idea of creating the ICC had been revived as the result of a desire to bring the authors of those crimes to justice. Illicit drug trafficking should be included in the competence of the Court.

112. He agreed to the inclusion of aggression and endorsed the Syrian position that the definition in General Assembly resolution 3314 (XXIX) of 1974 was still valid.

113. **Mr. JANSONS** (Latvia) said that he strongly supported the inclusion of aggression in the Statute of the ICC and that option 3 represented the necessary compromise, avoiding excessive definition and interpretation, while preserving the necessary linkage between the jurisdiction of the ICC and that of the Security Council.

114. **Mr. ALABRUNE** (France) said that his delegation could accept the inclusion of the crime of aggression within the competence of the Court on two conditions. The first condition was that it should be possible to agree on a sufficiently precise and clear definition, in which context he concurred with many delegations in congratulating the German delegation on the efforts it had made. Option 3 was acceptable.

115. The second condition was also reflected in option 3: it must be made quite clear both in article 5 and in article 10 of the Statute that the Court could take up a case only if the Security Council had determined that an act of aggression had taken place. It would be in the interests of the Court itself to be able to rely on a prior determination by the Security Council, to avoid having to pass judgement not only on persons but also on States.

116. His delegation agreed with the view that terrorism and crimes involving illicit traffic in narcotic drugs were a matter of legitimate concern, but also that the Norwegian approach was the correct one.

117. **Ms. WILMSHURST** (United Kingdom) said that she did not support the inclusion of the three treaty-based crimes, but supported the inclusion of aggression, on two conditions. First, there should be an adequate definition, such as that in option 3. Second, there must be a proper link with the Security Council. She agreed with the German delegation that, if the Security Council role was not reflected, aggression should not be included in the Statute.

118. **Mr. AL AWADI** (United Arab Emirates) said that a convention had been signed the previous month by the members of the League of Arab States on action to combat terrorism, including a precise definition of the crime. If the Statute took into account the definitions in that convention, he would not oppose the inclusion of such crimes in the Statute of the ICC. It would, however, be premature to include illicit traffic in narcotic drugs and crimes against United Nations personnel.

119. Aggression should be included within the competence of the Court, taking as a basis the definition of aggression contained in General Assembly resolution 3314 (XXIX).

120. **Mr. RAMA RAO** (India) said that it was not premature to consider inclusion of the treaty crimes. In view of the recent Arab summit on terrorism and several international conventions on terrorism, he fully agreed that that crime should be included. He was open-minded on the inclusion of trafficking in drugs.

121. He was not opposed to the concept of a review conference, but that did not mean that the inclusion of terrorism in the Court's jurisdiction should be postponed.

122. His delegation had no objection to the inclusion of aggression. However, to superimpose the Security Council's role on that of the Court would politicize the Court. Some means must be found whereby aggression could be included without such politicization of the Court.

123. **Ms. WONG** (New Zealand) said that her delegation could support the inclusion of aggression if a definition could be agreed on. It must be borne in mind that the Security Council had primary responsibility for determining the existence of an act of aggression, though the Charter did not exclude the General Assembly's responsibility.

124. She supported the inclusion of terrorism and strongly believed that attacks on United Nations and associated personnel should also be included. As had been pointed out, the inclusion of a treaty-based crime would require the establishment of a special regime for treaty-based crimes. However, the Spanish proposal in document A/CONF.183/C.1/L.1 would avoid that problem by including the reference to attacks on United Nations personnel in the war crimes provisions.

125. **Mr. FADL** (Sudan) said that the Statute should include aggression and supported the view of the representative of Syria that General Assembly resolution 3314 (XXIX) of 1974 should form the basis for defining aggression. He would revert to discussion of the respective roles of the Court and the Security Council regarding determination of aggression when the Committee discussed article 10.

126. **Ms. SINJELA** (Zambia) supported the inclusion of aggression in the crimes under the jurisdiction of the Court. He agreed with those who had argued that it was a primary crime underlying war crimes and crimes against humanity.

127. **Mr. ASSHAIBANI** (Yemen) supported the inclusion of aggression in the Statute of the Court. His position on the inclusion of terrorism, crimes against United Nations personnel and illicit traffic in narcotic drugs was fully in accordance with that taken by the representative of the United Arab Emirates.

128. **Ms. MEKHEMAR** (Egypt) said that her delegation agreed to the inclusion of aggression in the Statute of the ICC. General Assembly resolution 3314 (XXIX) should be the basis for its definition, which was why she supported option 2. She was willing to study other wording, and possibly option 3.

129. **Mr. PHAM TRUONG GIANG** (Viet Nam) said that it would be unacceptable to his delegation for aggression not to be included in the Statute of the Court.

130. As far as the options were concerned, his delegation would support an option which was clear and precise and reflected the interests and position of a large number of States.

131. **Mr. HAMDAN** (Lebanon) said that his delegation also supported the inclusion of aggression, the definition of which should be based on General Assembly resolution 3314 (XXIX) of 1974. That resolution reflected the basic principles of the Charter, which were not taken into account in the various options before the Committee, including option 3, originally proposed by Germany. He had been in contact with the German delegation to express his concerns, and understood that the link between the Security Council and the Court with regard to aggression would be studied in the context of article 10. There should be cooperation between the Court and the Council, the Court judging individuals and the Council sanctioning States. The Council could be one of the Court's clients, as it were, but there must be total separation of the powers of the two bodies.

132. Consideration of the treaty crimes should be deferred.

133. **Mr. POLITI** (Italy) said that his delegation favoured the inclusion of aggression within the Court's jurisdiction, and supported a clear definition of the crime. His preference was for option 2, in which the general definition was accompanied by an enumeration of specific acts constituting aggression.

134. Opinions differed on the various options, and flexibility was necessary in order to find a definition that was acceptable to all. He welcomed the efforts made by Germany in producing option 3. There were still problems with that definition, but the proposal could serve as a working basis.

135. If a Security Council role in determining the existence of an act of aggression by a State was to be recognized in the ICC Statute, that role should be construed only as a procedural condition for the intervention of the Court. Furthermore, the independence of the Court in the determination of individual criminal responsibility should be fully preserved.

136. He shared the concerns that including treaty crimes might delay the establishment of the Court. At the same time, the Committee should favourably consider the possibility of including crimes against United Nations and associated personnel, and he supported what had been said by the New Zealand representative.

137. **Mr. RODRIGUEZ CEDEÑO** (Venezuela) said that treaty crimes could be included in the Statute without the need for separate regimes. However, the Court's jurisdiction need not be static: it could evolve with time, and it would not be necessary to introduce treaty crimes at the current stage. He supported the Norwegian proposal, but the Statute should permit the Assembly of States Parties to decide on the inclusion of such crimes.

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138. Aggression should be included within the competence of the Court, on condition that it was clearly defined, and the possible impact studied. The precedents referred to by other delegations should be used in that regard. Option 3 seemed to represent a good basis for negotiation, but it should be developed further. The autonomy of the Court was essential for its effectiveness, and it could not depend on a decision or lack of decision by a political body. A harmonious, balanced text must be found that would give the Court the necessary autonomy without ignoring the powers of the Security Council.

139. Mr. MADANI (Saudi Arabia) said that aggression should be covered in the Statute, taking account of General Assembly resolution 3314 (XXIX).

140. The convention recently signed by the members of the League of Arab States defined terrorism and could be referred to. His delegation agreed with others that drug trafficking and crimes against United Nations personnel should not be included.

141. Mr. PEIXOTO (Brazil) said that he still had serious doubts about the possibility of broad agreement on a definition of aggression as an individual crime and foresaw serious problems related to conflicts of competence between the Security Council and the ICC, which would affect the independence of the Court. His delegation therefore did not favour the inclusion of the crime of aggression in the Statute.

142. Treaty crimes should also not be under the jurisdiction of the Court.

143. Mr. GÜNEY (Turkey) said that his delegation had doubts about including aggression among the crimes to be considered by the Court. There was no generally accepted definition of aggression and no precedent concerning individual criminal responsibility for acts of aggression. The competent body for considering acts of aggression was the Security Council, which was concerned with actions of States, and it was difficult to see how an act imputable to a State could become imputable to an individual.

144. The suggestion made by the Mexican delegation might offer a solution, or the matter might be covered in a review clause, as mentioned by the delegation of Norway. But it would be necessary to see the contents of such a clause before any decision could be taken.

145. A number of conventions existed concerning various aspects of terrorism. One of the elements to which he attached importance was that States should refrain from organizing, encouraging or inciting acts of terrorism in the territories of other States or tolerate activities on their own territory aimed at the commission of such acts. According to the International Law Commission, systematic and prolonged terrorism was a crime with international repercussions. A systematic crime against a civilian population would come under draft article 25 of the Statute.

146. In many instances, terrorist activities were supported by drug trafficking, which fully justified the inclusion of terrorism and crimes related to trafficking in drugs and psychotropic substances in article 5.

147. Mr. ALEMU (Ethiopia) said that his delegation strongly supported the inclusion of the crime of aggression in the Statute. The ICC would have an effective mechanism for bringing individual perpetrators to justice. However, the power vested in the Security Council for determining whether aggression had occurred should not be disregarded. He preferred option 3.

148. Since treaty-based crimes concerned only States parties to treaties, his delegation did not favour their inclusion.

149. **Mr. SHARIAT BAGHERI** (Islamic Republic of Iran) said that his delegation firmly supported the inclusion of aggression within the jurisdiction of the Court. Failure to include that crime would jeopardize the existence of the Court. The Security Council had encountered many difficulties in defining, recognizing and punishing acts of aggression or the authors of such acts and the Conference was in the course of establishing an international body to try the most serious cases. As had been stated, without competence on aggression the Court would be more symbolic than effective. He thought that the definition contained in resolution 3314 (XXIX) of 1974 was satisfactory and was adequately reflected in option 2.

150. He agreed with many other delegations that the Statute should cover only the first four categories of crime listed at the beginning of article 5.

The meeting rose at 6.30 p.m.